

# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 761

[OPTS-62082; FRL 3658-9]

### Polychlorinated Biphenyls; Wet Weight/Dry Weight Clarification

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend the PCB regulations by adding the phrase "on a dry weight basis," to § 761.1(b). This phrase was inadvertently omitted from the PCB final rule that was published in the *Federal Register* on Tuesday, July 10, 1984 (49 FR 28172). This addition is in line with historical EPA policy and will alleviate any confusion that may have been created by the omission.

**DATES:** Comments must be submitted on or before May 7, 1990.

**ADDRESS:** Comments should reference the docket number "OPTS 62082", and be sent in triplicate to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, G004, NE Mall, 401 M St., SW., Washington, DC 20460. All written comments will be available for public inspection and copying in the TSCA Public Docket Office, Rm. NE G004, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460, (202-554-1404), TDD: (202-554-0551).

**SUPPLEMENTARY INFORMATION:** EPA is proposing this rule to clarify the applicability of the Wet Weight versus Dry Weight determinations in assessing the level of PCB concentration.

#### I. Authority and Background

This proposed rule is issued pursuant to section 6(e)(1) of TSCA. Section 6(e)(1)(A) gives the Administrator the authority to promulgate rules prescribing the methods for disposal of PCBs. The phrase "on a dry weight basis", which indicates the method by which PCB concentrations are determined, was originally reported on May 24, 1977, in a proposed rule, entitled "Polychlorinated Biphenyls (PCBs), Toxic Substance Control" (42 FR 26564), which is referred to as the Proposed Disposal and Marking Rule. The phrase appeared in

§ 761.2(v), in the definition of "PCB Mixture" as follows:

'PCB Mixture' means any mixture, except municipal sewage treatment sludge, which contains 0.05 percent (on a dry weight basis) or greater of a PCB chemical substance, and includes dielectrics, contaminated solvents and oils, or rags, soil, paints and debris.

EPA chose this requirement during the rulemaking process for the proposed rule, which included several opportunities for public comment: four informal hearings, two public meetings, and the opportunity for interested parties to submit written comments and documents. At the public meeting held on January 24, 1977, the EPA addressed the dry weight/wet weight issue (in the second question posed at the meeting) by requesting comments on the inquiry.

What is the definition of PCBs for marking, disposal and manufacturing ban regulations? The Agency has under consideration definitions on the following classes of PCBs: PCB Liquids: A PCB liquid is defined as any homogenous liquid containing an aggregate concentration of all PCB isomers 10 percent (by weight) or greater. PCB Mixture: A PCB mixture is defined as any fluid, solid or multiphase substance containing an aggregate concentration of all PCB isomers of 0.05 percent (by weight) or greater, except for substances categorized as PCB liquids.

EPA then used the comments, documents, and technical reports submitted by the public in response to this question, and others, to draft the proposed rule. An EPA support document entitled, "PCB Marking and Disposal Regulations Final Action - Technical Support Document", which summarized the public comments, indicates that no public comments were received specifically addressing either the phrase "by weight", which was included in the question posed at the public meeting, or the phrase "on a dry weight basis", which appeared in the text of the proposed rule.

The phrase, "on a dry weight basis" appeared in the March 15, 1977, fifth draft of the proposed Disposal and Marking rule. Prior to that draft, the parenthetical phrase had read, "by weight". This change is a result of two work group meetings whose agendas respectively included the topics, "Analytical Methods for PCBs", and "Analytical Chemistry Methods for PCBs".

An Official Rulemaking Record contained in the Final Disposal and Marking Rule, published on February 17, 1978, (43 FR 7150), referenced several EPA technical documents, all of which were used in the rulemaking process, and many of which referenced a technique requiring the determination of the concentration of PCBs in a wet

sample to be based on the concentration of the dry weight of the sample. In addition, cited in the final rule is the document entitled "ANSI Standards: Guidelines for Handling and Disposal of Capacitor and Transformer-Grade Askarels Containing Polychlorinated Biphenyls" ANSI-C 107.1-1974, (Rulemaking Record O-File). The ANSI Standards include PCB analysis methods, which calculate PCB concentrations on a dry weight basis, in Appendices B 4.5.2 and B 4.6. These facts, coupled with the workgroup agenda, indicate that the workgroup referred to several referenced documents, and concluded that the proper method for PCB determinations was on a dry weight basis, and then included those exact words in both the Proposed Disposal and Marking Rule and the Final Disposal and Marking Rule.

On August 2, 1978, EPA published an "Addendum to Preamble and Corrections to Final Rule", (43 FR 33918), to amend the final Disposal and Marking Rule. There were no corrections in the addendum which would have either rescinded or deleted the phrase "on a dry weight basis".

The next time the phrase "on a dry weight basis" occurs is in a June 7, 1978 proposed rule, entitled, "Manufacturing, Processing, Distribution in Commerce, and Use Bans", (43 FR 24802), which is referred to as the Proposed Ban Rule. The Proposed Ban Rule underwent an enormous amount of public scrutiny, due to the proposed changes in the PCB regulatory limit—from 500 ppm to 50 ppm. Although numerous comments were received addressing the proposed limit reduction, no comments were received addressing the parenthetical phrase, "on a dry weight basis".

Subsequently, when the Final Ban Rule was published, on May 31, 1979, the phrase, "on a dry weight basis", was moved from the "Definitions" section (formerly § 761.2, now § 761.3) to the "Applicability" section (§ 761.1). However, the phrase remained unchanged, and the PCB concentration was still required to be determined "on a dry weight basis".

The phrase "dry weight basis" was not changed in the proposed rule of December 8, 1983 (48 FR 55076), also known as the Uncontrolled Rule. This rule allowed for the use of certain PCB items and did not address the disposal of PCBs. However, in the Notice of Final Rulemaking in the July 10, 1984 Uncontrolled Rule, (49 FR 28172), the parenthetical phrase, "on a dry weight basis" was inadvertently omitted from the "Applicability" section (§ 761.1).

EPA has concluded that this deletion was a drafting error, because had the omission been calculated and intentional, EPA would have thoroughly discussed it in the preamble to the Final Uncontrolled Rule.

The proposed rule included the phrase in the general applicability section, but did not use the phrase in the sections authorizing the use of PCBs in heat transfer systems and hydraulic systems. In the final rule, the use of the phrase was reversed: "dry weight basis" no longer appeared in the applicability section, but it did appear in the sections authorizing the use of PCBs in heat transfer systems and hydraulic systems.

EPA has maintained as a matter of regulatory interpretation that PCB concentrations should be determined on a dry weight basis. Determining the concentration of PCBs on a wet weight basis would result in the reporting of a diluted concentration of PCBs, which is strictly prohibited in 40 CFR 761.1(b). PCB levels must be reported according to their original concentration before their dilution. It is a common policy throughout EPA to require that testing be appropriate for the purpose and the type of chemical matrix such that the sample integrity is not compromised in any way.

For example, specifically regarding sludges, it is a generally accepted procedure to measure the concentration of PCBs in a sludge matrix, with water as the aqueous phase, by using the "dry weight basis" method as described in greater detail in 40 CFR part 136: Guidelines Establishing Test Procedures for the Analysis of Pollutants, under the Clean Water Act, which was published in the *Federal Register* on October 26, 1984.

Additionally, the term "dry weight basis" is described by EPA as the preferred method for reporting the concentration of PCBs in sludges in the manual, "Analytical Methods for the National Sewage Sludge Survey", Sections 16.1.3 and 16.2.3, published by the Office of Water in March of 1989.

## II. Proposed Change

To rectify the inadvertent omission, EPA proposes to amend § 761.1(b) to reinsert the deleted phrase, "on a dry weight basis", to reinforce EPA's strict past and present policy of non-dilution.

## III. Rulemaking Record

Materials used in this rulemaking are available for inspection at the TSCA Public Docket Office, in Room NE-G004, 401 M St., SW., Washington, DC 20460. The following documents for this rulemaking are in the public record:

(1) "Polychlorinated Biphenyls (PCBs), Toxic Substance Control", (Proposed Disposal and Marking Rule), Docket No. 68005, May 24, 1977 (42 FR 26564).

(2) "Polychlorinated Biphenyls (PCBs), Disposal and Marking", (Final Disposal and Marking Rule), Docket No. 68005, February 17, 1978, (43 FR 7150).

(3) "ANSI Standards: Guidelines for Handling and Disposal of Capacitor and Transformer-Grade Askarels Containing Polychlorinated Biphenyls", ANSI-C 107.1-1974, Docket No. 68005, Rulemaking Record O-File.

(4) Minutes of the Public Meeting, January 24, 1977, Docket No. 68005.

(5) "PCB Marking and Disposal Regulations Final Action - Technical Support Document", Docket No. 68005.

(6) "Polychlorinated Biphenyls (PCBs), Toxic Substance Control" Draft Copies, Docket No. 68005.

(7) "Addendum to Preamble and Corrections to Final Rule", Docket No. 68005, August 2, 1978, (43 FR 33918).

(8) "Manufacturing, Processing, Distribution in Commerce, and Use Bans", (Proposed Ban Rule), Docket No. 60001, June 7, 1978, (43 FR 24802).

(9) "Polychlorinated Biphenyls; Criteria Modification; Hearings", (Final Ban Rule), Docket No. 60001, May 31, 1979, (44 FR 31514).

(10) "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations", (Proposed Uncontrolled Rule), Docket No. 62032, December 8, 1983, (48 FR 55076).

(11) "Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations", (Final Uncontrolled Rule), Docket No. 62032, July 10, 1984, (49 FR 28172).

## IV. Other Regulatory Requirements

### A. Executive Order

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this proposed rule is not a major rule as defined in section 1(b) of the Executive Order. This proposed rule has no effect on the economy, because it imposes no additional obligations upon the regulated community. The purpose of this proposed rule is to reinsert an inadvertently deleted phrase which will clarify how PCB concentrations are to be determined. Thus, the proposed rule has no economic consequences and is not a major rule under the Executive

Order. A regulatory impact analysis is therefore not required.

### B. Regulatory Flexibility Act

Section 605(b) of the Regulatory Flexibility Act, (15 U.S.C. 601 et seq. Pub. L. 96-534, September 19, 1980) requires EPA to prepare and make available for comment a regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small business entities. If, however, a regulation will not have a significant impact on a substantial number of small entities, no such regulatory impact analysis is required.

The effect of this rulemaking will be to simply reinsert a phrase to clarify a requirement. Thus, this rule has no impact on small entities. I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 et seq., authorizes the Director of the Office of Management and Budget (OMB) to review certain information collection requests by Federal agencies. There are no requirements in this rule that qualify as a "collection of information" as defined in 44 U.S.C. 3502(4).

### List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: March 30, 1990.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, part 761 is proposed to be amended as follows:

### PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

2. In § 761.1 by revising paragraph (b) to read as follows:

#### § 761.1 Applicability.

\* \* \* \* \*

(b) This part applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items. Substances that are regulated by this rule include, but are not limited to, dielectric fluids, contaminated solvents, oils, waste oils,

heat transfer fluids, hydraulic fluids, paints, sludges, slurries, dredge spoils, soils, materials contaminated as a result of spills, and other chemical substances or combination of substances, including impurities and byproducts and any byproduct, intermediate or impurity manufactured at any point in a process. Most of the provisions of this part apply to PCBs only if PCBs are present in concentrations above a specified level. For example, subpart D applies generally to materials at concentrations of 50 parts per million (ppm) and above. Also certain provisions of subpart B apply to PCBs inadvertently generated in manufacturing processes at concentrations specified in the definition of "PCB" under § 761.3. PCB concentrations under this part shall be determined on a dry weight basis. No provision specifying a PCB concentration may be avoided as a result of any dilution, unless otherwise specifically provided.

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[FR Doc. 90-8028 Filed 4-5-90; 8:45 am]

BILLING CODE 6560-50-D